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No. 91-1693

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

CALIFORNIA-HAWAIIAN FUND, INC., TRITON CONTINENTAL PROPERTIES JOINT VENTURE, HUGO VON PLATEN-LUDER, MICHAEL B. MONTGOMERY, RONALD D. McCOMMON, and SHIRLEY VON PLATEN-LUDER,

Petitioners,

vs.

HONOLULU FEDERAL SAVINGS AND LOAN ASSOCIATION, TRITON CONTINENTAL PROPERTIES CORPORATION, ALVIN K.H. CHEE, JAMES ADRIAN ADAMS, CHEE-HIRONAKA, SAM S. HIRONAKA, FEDERAL DEPOSIT INSURANCE CORPORATION, OFFICE OF THRIFT SUPERVISION, and RESOLUTION TRUST CORPORATION

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT HONOLULU FEDERAL SAVINGS AND LOAN ASSOCIATION'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the decision of the Court of Appeals is in conflict with the decision of another federal court of appeals on the same matter?

2. Whether the decision of the Court of Appeals involves a significant issue of federal law which constitutes a substantial violation of Petitioners' statutory and constitutional rights?

3. Whether certiorari review of a Court of Appeals order dismissing an appeal for lack of appellate jurisdiction is proper where 28 U.S.C. § 1447(d) specifically provides that no appellate review is allowed for remand orders based on lack of subject matter jurisdiction?

4. Whether certiorari review is appropriate under the collateral order doctrine for a Court of Appeals decision dismissing an appeal from an order granting removal of a fourth-party action to the federal court from the state court?

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*A copy of this statute is provided only because Petitioners attached an incorrect copy of 12 U.S.C.S. § 1819 (1992) U.S.C.A. as Appendix A-105 to the Petition for Writ of Certiorari.

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Respondent HONOLULU FEDERAL SAVINGS AND LOAN ASSOCIATION respectfully requests that this Court deny the Petition for Writ of Certiorari filed by Petitioners CALIFORNIA-HAWAIIAN FUND, INC., TRITON CONTINENTAL PROPERTIES JOINT VENTURE, HUGO VON PLATEN-LUDER, MICHAEL B. MONTGOMERY, RONALD D. McCOMMON, and SHIRLEY VON PLATEN-LUDER (collectively "Petitioners"). The Petition seeks certiorari review of the Ninth Circuit Court of Appeals decision dismissing two separate appeals: 1) the appeal filed August 1, 1991 from the Order Granting Plaintiff's Motion to Remand and for Sanctions, CA No. 91-16409 ("the first appeal") and 2) the appeal filed September 9, 1991 from the Order Directing Clerk to Issue Writ of Certiorari, CA No. 91-16524 ("the second appeal"). The two appeals were never consolidated. Respondent HONOLULU FEDERAL SAVINGS AND LOAN ASSOCIATION is not a party to the fourth-party action, which is the subject of the second appeal. Accordingly, this brief will primarily address issues regarding the requested certiorari review as they relate to the first appeal.

1. CITATIONS TO OPINIONS BELOW

An Order Granting Plaintiffs' Motion to Remand and for Sanctions and Denying Fourth-Party Defendant's Motion to Dismiss Fourth-Party Complaint was entered by the United States District Court for the District of Hawaii on July 2, 1991 in *Honolulu Federal Savings and Loan Association v. Triton Continental Properties Joint Venture, et al.*, Civil No. 91-00050 DAE, which was not published. A copy is attached to the Petition For Writ of Certiorari as Appendix A-7.

An Order Directing Clerk to Issue Writ of Certiorari was entered by the United States District Court for the District of Hawaii on August 9, 1991, in *Honolulu Federal Savings and Loan Association v. Triton Continental Properties Joint Venture, et al.*, Civil No. 91-00050 DAE, which was not

published. A copy is attached to the Petition For Writ of Certiorari as Appendix A-25.

An Order was entered by the United States Court of Appeals for the Ninth Circuit on December 4, 1991 dismissing appeals CA No. 91-16409 and No. 91-16524, which was not published. A copy is attached to the Petition For Writ of Certiorari as Appendix A-1.

An Order was entered by the United States Court of Appeals for the Ninth Circuit on January 21, 1992 denying petition for rehearing and suggestion for rehearing *en banc* in appeals CA Nos. 91-16409 and 91-16524, which was not published. A copy is attached to the Petition For Writ of Certiorari as Appendix A-3.

A Judgment was entered on February 20, 1992 by the United States Court of Appeals for the Ninth Circuit in appeals CA Nos. 91-16409 and 91-16524 dismissing the appeals, which has not yet been published. A copy is attached to the Petition For Writ of Certiorari as Appendix A-5.

2. STATEMENT OF THE CASE

2.1 *Statement of Facts*

On October 15, 1986, Respondent Honolulu Federal Savings and Loan Association ("Honfed") filed a lawsuit against Petitioners in the First Circuit Court of the State of Hawaii on exclusively state law claims for breach of contract. In 1985, Petitioners entered into a Purchase Agreement for commercial property, which had a specified closing deadline of December 30, 1985. Because of their inability to obtain financing and close the purchase transaction by the required deadline, Petitioners requested several extensions of the closing date. In exchange for Honfed's consent to these extensions, Petitioners agreed to pay Honfed $50,000 per month in interest and $12,596.52 in carrying costs. Notwithstanding Honfed's extension of the deadline for over nine months, the purchase was not consummated because of Petitioners' failure to obtain financing. Petitioners also neglected to pay the extension fees for two months and the

carrying costs for one month as required under the extension agreements. HonFed's suit sought to recover these sums.

2.2 *Procedural Background*

Contrary to Petitioners' representations to this Court, this case was not in its "early pleadings stage" when Petitioner Shirley Von Platen-Luder ("Von Platen-Luder") filed her Notice of Removal on January 23, 1991. The lawsuit had been pending in state court for four and a half years since October 1986. Discovery had been conducted, partial summary judgment had been granted in favor of HonFed, and a third-party action had been pending since November 6, 1989. Von Platen-Luder was a third-party cross-claim defendant. The action was improperly removed by Von Platen-Luder under 28 U.S.C. § 1441(b).

HonFed filed a Motion to Remand and for Sanctions on February 22, 1991, requesting remand of the case under 28 U.S.C. § 1447(c) on the ground that the United States District Court for the District of Hawaii lacked subject matter jurisdiction over the removed case. A hearing on the Motion was held before Judge David A. Ezra on July 1, 1991.

HonFed argued that the District Court did not have "original jurisdiction" under 28 U.S.C. § 1441(b), the statute cited by Petitioner Von Platen-Luder in her Notice of Removal. HonFed further argued that jurisdiction did not exist under 28 U.S.C. § 1441(c) because the federal claims asserted in the third-party counterclaim and cross-claim were not separate and independent in that they all related to Petitioners' efforts to purchase the commercial property from HonFed. HonFed also argued that Von Platen-Luder could not remove pursuant to 28 U.S.C. § 1442(a) because she was not a party to the fourth-party action against the federal agencies named therein—the Federal Deposit Insurance Corporation ("FDIC"), Office of Thrift Supervision and Resolution Trust Corporation.

On July 2, 1991, the District Court issued the Order Granting Plaintiff's Motion to Remand and For Fourth Party Defendants' Motion to Dismiss Fourth-Party Complaint and

remanded the case to the state court.[1] The District Court determined that it did not have jurisdiction over the case. The court reasoned that 1) third-party claims can be removed only if they are separate and independent from nonremovable state claims raised in a complaint and 2) that the claims in the third-party cross-claim against Petitioner Von Platen-Luder all arose from the same subject matter as the claims in HonFed's Complaint, namely the Purchase Agreement for the commercial property and its extension, and thus that they were not separate and independent. The Court cited direct precedent in the District of Hawaii which holds that third party defendants are not entitled to remove when the third party complaint arises from the same occurrence as the original complaint. Von Platen-Luder could not remove under either 28 U.S.C. §§ 1441(b) or 1441(c).[2]

The Court further held that Von Platen-Luder could not remove under 28 U.S.C. § 1442(a) or 12 U.S.C. § 1819(b)(2), which gives the FDIC the right to remove, on the ground that the FDIC, the Office of Thrift Supervision, and the Resolution Trust Corporation were named only in the fourth-party complaint. To remove under either statute, the removing party must be a party to the same complaint upon which removal is based. Von Platen-Luder based her removal on the third-party complaint. Von Platen-Luder was not a party to the fourth-party action.

The Court also granted an award of attorneys' fees and costs to HonFed under 28 U.S.C. § 1447(c).[3] The

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[1]It should be noted that HonFed had not sought remand on abstention grounds and, as the remand order shows, the District Court did not remand because it decided it should abstain in this case. Petitioners' representation to the contrary is simply wrong.

[2]Although Petitioners represent to this Court that the District Court considered only 28 U.S.C. § 1441(b), the removal statute cited in the Notice of Removal, this representation is incorrect, as a review of the remand order clearly shows.

[3]Following the remand, the state court proceeded with the hearings on the dispositive motions that HonFed had filed *prior* to the removal. The state court granted summary judgment in favor of HonFed and thereby resolved all claims between HonFed and Petitioners. The state court judgment is now on appeal by Petitioners to the Hawaii Supreme Court.

determination of the amount of the sanction award was referred to the magistrate.

On August 1, 1991, before the magistrate entered his order regarding the amount of that award, Petitioner Von Platen-Luder filed a Notice of Appeal of the remand order and sanction award to the Ninth Circuit Court of Appeals, CA No. 91-16409. On September 17, 1991, HonFed filed a Motion to Dismiss Appeal in CA No. 91-16409 based on 28 U.S.C. § 1447(d), which bars appellate review of remand orders. On December 4, 1991, the Ninth Circuit granted the Motion to Dismiss.

The FDIC filed a Petition for Removal, which only removed the fourth-party action entitled, "*Hugo Von Platen-Luder, Fourth Party Plaintiff v. Federal Deposit Insurance Corporation, et al*, a part of action No. 86-3865" to the United States District Court for the District of Hawaii on July 29, 1991. The District Court called a status conference on August 6, 1991 to confirm that the FDIC sought only to remove the fourth-party action and not the entire case. The District Court issued an Order Directing Clerk to Issue Writ of Certiorari (the "removal order"), which directed the state court clerk to certify and transmit the records in the fourth-party action and directed the state court to proceed no further with the fourth-party action. The fourth-party action thereafter continued to proceed in District Court.

It should be noted that Petitioners refer to the removal order as the "second remand order." However, the order is not a remand order and did not remand any of the case to state court. On September 9, 1991, Petitioners filed a second Notice of Appeal from the removal order, CA No. 91-16524. The Ninth Circuit also dismissed CA No. 91-16524 pursuant to 28 U.S.C. § 1291, which confines the jurisdiction of courts of appeal to "final decisions."

3. SUMMARY OF ARGUMENT

Petitioners' cite two reasons for certiorari review: (1) the Court of Appeals decision raises significant issues of federal law, which constitute substantive violations of Petitioners'

statutory and constitutional rights; and (2) the decision also conflicts with decisions of the Supreme Court and other circuit courts. However, Petitioners have not demonstrated such grounds from the decision and record below. The Ninth Circuit Court of Appeals has not ruled in any manner adverse to or in conflict with the authorities cited by Petitioners.

The Ninth Circuit Court properly dismissed the first appeal because the District Court remanded the case based on its determination that it lacked subject matter jurisdiction under the removal statutes and the appellate court lacks appellate jurisdiction over orders remanding cases for lack of subject matter jurisdiction under 28 U.S.C. § 1447(d). The opinions from the circuit courts cited by Petitioners do not conflict on this issue.

With respect to the second appeal, the Order Directing Clerk to Issue Writ of Certiorari is not appealable under the collateral order doctrine. The fourth-party action in which the removal order was entered is still proceeding in the District Court. The removal order can be appropriately appealed when a final judgment is entered in that action.

Although Petitioners seek to challenge 28 U.S.C. § 1447(d) on equal protection grounds, Congress' prohibition of appeals from remand orders, except in very limited circumstances, is rationally related to the government's interest in preventing the federal removal provisions from being used to delay state court actions.

4. ARGUMENT

4.1 *This Court Reviews the Ninth Circuit's Decision to Dismiss the First Appeal De Novo.*

Petitioners erroneously contend that this Court must accept as true all facts as alleged by Petitioners. There is no authority to support Petitioners' argument that this Court must accept and give deference to all facts alleged by Petitioners. The instant petition for certiorari review does not involve a dismissal by the Ninth Circuit based on the substantive merits or substantive law grounds but rather involves a dismissal based on lack of jurisdiction. The request for certiorari review

involves the statutory construction of 28 U.S.C. § 1447(d) and, therefore, is reviewed *de novo*. Moreover, if the statutory language is clear, this Court need look no further than that language itself in determining the meaning of the statute. *See Hellon & Associates, Inc. v. Phoenix Resort Corp.*, 958 F.2d 295, 297 (9th Cir. 1992).

4.2 *The District Court's Remand Order Was Solely Based on Its Determination That It Lacked Subject Matter Jurisdiction and Is Not Reviewable on Appeal Under 28 U.S.C. § 1447(d).*

This petition, as it relates to the first appeal, arises from the appeal to the Ninth Circuit of a remand order that is not subject to appeal. The District Court remanded because it determined that it did not have subject matter jurisdiction over the case under the removal statutes. 28 U.S.C. § 1447(d) explicitly bars appellate review of all remand orders that are based on the determination that the district court lacks subject matter jurisdiction. The Ninth Circuit properly dismissed Petitioner's appeal from the remand order because it did not have jurisdiction over the appeal.

28 U.S.C. § 1447(d) provides that "an order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise . . . ." In *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336 (1976), this Court re-affirmed that 28 U.S.C. § 1447(d) bars a challenge in the appellate courts to any remand orders pursuant to 28 U.S.C. § 1447(c), which provides for the remand of cases over which the district court lacks subject matter jurisdiction. In *Thermtron*, this Court further held that appellate review would lie only if the district court remanded for reasons wholly different from those authorized by 28 U.S.C. § 1447(c), such as congestion in the district court's docket.

This Court has not varied from the rule it articulated in *Thermtron*. For example, in *Volvo Corp. v. Schwarzer*, 429 U.S. 1331 (1976), Chief Justice Rehnquist denied an application for a stay of a remand order that had been based on the district court's conclusion that it did not have

jurisdiciton of the action. Chief Justice Rehnquist observed that *Thermtron* did not help the petitioner in *Volvo* because the district court had clearly based the remand order on a ground stated in 28 U.S.C. § 1447(c)—lack of subject matter jurisdiction—and that review of the order was therefore "presumptively barred by the operation of 28 U.S.C. § 1447(d) . . . ." *Volvo*, 429 U.S. at 1332-33.

Thermtron, similarly, does not support Petitioners here. The District Court specifically held that none of the removal statutes upon which Petitioner Von Platen-Luder relied for removal jurisdiction (including removal statutes that she had not cited in her Notice of Removal but had raised in her arguments to the District Court) entitled her to remove. The remand order was solely based upon the District Court's lack of subject matter jurisdiction. Therefore, even if the District Court's decision was erroneous, it is not subject to appellate review.

Pelleport Investors, Inc. v. Budco Quality Theatres, Inc., 741 F.2d 273 (9th Cir. 1984), and *Clorox Co. v. United States District Court*, 779 F.2d 517 (9th Cir. 1985), cited by Petitioners, follow the authority and rule established under *Thermtron*. These decisions have consistently held that, although a district court's decision to remand based upon lack of subject matter jurisdiction is not reviewable on appeal, a decision to remand based on "a substantive decision on the merits apart from any jurisdictional decision" is subject to review. *Pelleport*, 741 F.2d at 276.

Petitioners erroneously seek to characterize the remand order in this case as falling under this exception to the bar of appellate review. Petitioners seek to avoid the direct holding of the *Thermtron* line of cases by arguing that any rulings involving "federal law" fall under the foregoing exception. The critical distinction for the exception to the bar on appellate review to apply is that the district court's decision must be on matters of substantive law *apart from* jurisdictional questions or issues. Here, the District Court did not make any decision on the substantive merits of the dispute

between the parties. Its decision to remand was grounded solely on the lack of subject matter jurisdiction.

4.3 *The Ninth Circuit Court of Appeals' Decision to Dismiss the Appeal Does Not Conflict with the Decisions of Other Courts of Appeal or the Supreme Court.*

Rule 10 of the Rules of the Supreme Court of the United States provides: "A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only when there are special and important reasons therefor." Rule 10 sets forth the character of reasons for a grant of certiorari. Petitioners contend that the decision in this case conflicts with other decisions addressing the same issue in this circuit. Petitioners cite decisions from other federal courts but fail to explain how the Court of Appeals' decision in this case conflicts with or departs from federal law cited in the other cases. Contrary to Petitioners' efforts to characterize this case as one involving a holding on which the courts of appeal stand in conflict, the Ninth Circuit Court's decision to dismiss the appeal falls under the rule reaffirmed in *Thermtron* and its progeny that remand orders based on jurisdictional decisions are not reviewable on appeal.

Petitioners also argue that a conflict in the circuits exists over whether third-party defendants can remove. The Ninth Circuit has not yet addressed this issue. *See O'Halloran v. University of Washington*, 856 F.2d 1375 (9th Cir. 1988). However, whether such a conflict exists is not relevant to this case for two reasons. First, when the courts of appeal address the issue of removal by third-party defendents, the one issue on which they uniformly agree is that "removal should only be allowed for [third-party] claims that are, in the language of § 1441(c), 'separate and independent.'" *Patient Care, Inc. v. Freeman*, 755 F. Supp. 644, 650 (D.N.J. 1991). The District Court here specifically determined that the third-party claims in this case were not separate and independent. Its decision that removal was not proper was entirely consistent with the law of other federal courts.

More importantly, the issue before this Court is whether the Ninth Circuit erred in dismissing the appeal under 28 U.S.C. § 1447(d). It is not whether third-party defendants can remove. Any conflicts among the courts of appeal on the issue of third-party removal are not relevant to a review of the petition for writ of certiorari in this case.[4]

4.4 *Section 1447(d) of Title 28 Does Not Violate Petitioners' Right to Equal Protection Under the Fifth Amendment of the United States Constitution.*

Petitioners contend that their equal protection rights have been violated because Congress has denied private litigants the right to appeal from remand orders, but has granted such appeal rights to federal agencies such as the FDIC under certain specific statutes. *See, e.g.*, 12 U.S.C. § 1819(b)(2)(C) ("The Corporation may appeal any order of remand entered by any United States district court."). According to Petitioners, if Congress enacts a law giving federal agencies access to the federal appellate process, it must give private litigants the same appeal rights too. Arguably, Congress cannot differentiate between federal agencies and other parties in enacting appellate jurisdictional statutes without violating the equal protection clause. Petitioners' interpretation of the equal protection clause is overly broad and unsupportable.

This case does not involve fundamental rights. Petitioners do not have a constitutional right to an appeal nor do they have a constitutional right to have their state law claims heard in federal court. *Jones v. Barnes*, 463 U.S. 745 (1983) (Constitution does not grant right to appellate review).

Morever, Petitioners are not members of a protected class. Therefore, the rational basis test must be used to determine whether section 1447(d) is constitutional in the face of an equal protection challenge. *Bankers' Life & Casualty Co. v.*

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[4]Petitioners also cite two Hawaii cases in support of their argument that certiorari review should be granted. These cases allegedly stand for the proposition that state courts have reached decisions that conflict with those of the federal courts. However, these state cases obviously do not address the issue of removal to federal court.

Crenshaw, 486 U.S. 71 (1988) (legislation imposing penalties on unsuccessful appellant was rationally related to state's intent to discourage frivolous appeals and, thus, was constitutional). Under the rational relationship test, a law violates the dictates of equal protection only if it is not rationally related to a legitimate government interest. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985). A party challenging a law on equal protection grounds bears a heavy burden of overcoming a presumption of rationality by a clear showing of arbitrariness and irrationality. *Hodel v. Indiana*, 452 U.S. 314, 332-33 (1981). Petitioners cannot meet this heavy burden in this case.

This Court has already considered the Congressional intent underlying section 1447(d) in *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336 (1976). As the Court explained:

> There is no doubt that in order to prevent delay in the trial of remanded cases by protracted litigation of jurisdictional issues, *United States v. Rice*, 327 U.S. at 751, 90 L.Ed 982, 66 S.Ct. 835, Congress immunized from all forms of appellate review any remand order issued on the grounds specified in § 1447(c), whether or not that order might be deemed erroneous by an appellate court.

Id. at 351. Although the Court did not address Congress' intent in the context of an equal protection challenge, there can be no question that Congress' prohibition of appeals from remand orders is rationally related to its goal of preventing "the additional delay which a removing party may achieve by seeking appellate reconsideration of an order of remand." *Id.* at 354 (J. Rehnquist dissenting). Without such a rule, "federal removal provisions may become a device affording litigants a means of substantially delaying justice." *Id.* at 355.

The fact that Congress has also seen fit to grant greater appeal rights to the FDIC does not change this analysis. Section 1819(b)(2)(C) is also rationally related to a legitimate government interest. In enacting this statute, Congress

weighed the need to return remanded cases to the state courts as expeditiously as possible against the need to have actions against the FDIC heard and decided by the federal courts. Although private litigants might use reconsideration of district court remand orders to delay justice in state courts, federal agencies would have no such motivation. Therefore, the concern that compelled Congress to limit appellate review for private litigants does not apply to federal agencies. Moreover, § 1819 also fulfills Congress' desire to channel actions against the FDIC away from the state courts and into federal courts, reducing the potential for multiple suits with inconsistent results. *See Osborn v. Bank of United States*, 6 Law. Ed. 204 (1824) (upholding the constitutionality of a statute that granted the Bank of the United States the right to sue in federal court on causes of action based upon state law); *cf. Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480 (1983) (Congress properly exercised its power to grant exclusive federal jurisdiction to cases involving foreign sovereigns).

Petitioners also mistakenly contend that Congress cannot restrict the appellate powers of the federal courts *at all* without violating Article III, section 1, of the United States Constitution. This argument has no support whatever.

The federal courts are courts of limited jurisdiction, jurisdiction that is determined by the Constitution and Congress. As this Court recently explained:

> It remains rudimentary law that "[a]s regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, *and an act of Congress must have supplied it.*"

Finley v. United States, 490 U.S. 545, 547-48 (1989) (emphasis in original, citations omitted); *see also Argentine Republic v. Amerada Hess*, 488 U.S. 428, 433 (1989) ("We start from the well-settled proposition that the subject matter

jurisdiction of the lower federal courts is determined by Congress in the exact degrees and character which to Congress may seem proper for the public good"); *Stewart Organization v. Ricoh Corp.*, 487 U.S. 22, 32 (1988) (Congress has the power to make rules governing federal court practice and procedure).

Congress in this case has determined that, because private litigants may use the federal removal provisions to delay state court actions, the jurisdiction of the federal appellate courts to review remand orders must be limited. The line that it has drawn—between federal agencies, whose claims and defenses are generally questions of federal law, and private litigants, who may be motivated to use the federal removal provisions as a delay tactic—is rationally related to the government's interest in an efficient and responsive judicial system.

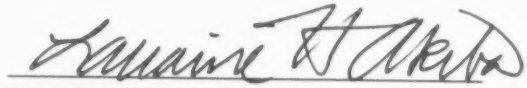
4.5 *The Order Directing Clerk to Issue Writ of Certiorari Is Not a Final Appealable Order.*

HonFed is not a party to the second appeal. However, HonFed would simply note that the Order Directing Clerk to Issue Writ of Certiorari is not a final appealable order. Petitioners argue that the removal order falls under the collateral order doctrine, which provides an exception to the requirement of 28 U.S.C. § 1291 that all appeals await final judgment on the merits. This Court has emphasized that the collateral order doctrine is a narrow exception and requires a determination that the order in question "conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment." *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 375 (1981). The removal order does not satisfy this criteria. Petitioner and Fourth-Party Plaintiff Hugo Von Platen-Luder may effectively appeal the order after a final judgment is entered in the fourth-party action without any prejudice to his rights of appellate review.

5. CONCLUSION

For all the reasons set forth herein, Honfed submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted, this 22nd day of May, 1992.



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Appendix A

12 U.S.C.S. § 1819 (1992) United States Code

(b)(2) Federal court jurisdiction. (A) In general. Except as provided in subparagraph (D), all suits of a civil nature at common law or in equity to which the Corporation, in any capacity, is a party shall be deemed to arise under the laws of the United States.

(B) Removal. Except as provided in subparagraph (D), the Corporation may, without bond or security, remove any action, suit, or proceeding from a State court to the appropriate United States district court before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the Corporation or the Corporation is substituted as a party.

(C) Appeal of remand. The Corporation may appeal any order of remand entered by any United States district court.

(D) State actions. Except as provided in subparagraph (E), any action—

(i) to which the Corporation, in the Corporation's capacity as receiver of a State insured depository institution by the exclusive appointment by State authorities, is a party other than as a plaintiff;

(ii) which involves only the preclosing rights against the State insured depository institution, or obligations owing to, depositors, creditors, or stockholders by the State insured depository institution; and

(iii) in which only the interpretation of the law of such State is necessary,

shall not be deemed to arise under the laws of the United States.

(E) Rule of construction. Subparagraph (D) shall not be construed as limiting the right of the Corporation to invoke the jurisdiction of any United States district court in any action described in such subparagraph if the institution of which the Corporation has been appointed receiver could have invoked the jurisdiction of such court.

No. 91-1693

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

CALIFORNIA-HAWAIIAN FUND, INC., TRITON CONTINENTAL PROPERTIES JOINT VENTURE, HUGO VON PLATEN-LUDER, MICHAEL B. MONTGOMERY, RONALD D. McCOMMON, and SHIRLEY VON PLATEN-LUDER,
Petitioners,

vs.

HONOLULU FEDERAL SAVINGS AND LOAN ASSOCIATION, TRITON CONTINENTAL PROPERTIES CORPORATION, ALVIN K.H. CHEE, JAMES ADRIAN ADAMS, CHEE-HIRONAKA, SAM S. HIRONAKA, FEDERAL DEPOSIT INSURANCE CORPORATION, OFFICE OF THRIFT SUPERVISION, and RESOLUTION TRUST CORPORATION
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT HONOLULU FEDERAL SAVINGS AND LOAN ASSOCIATION'S SERVICE LIST RE BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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RESPONDENT HONOLULU FEDERAL SAVINGS AND LOAN ASSOCIATION'S SERVICE LIST RE BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

I hereby certify that on this date, three (3) copies of Respondent HONOLULU FEDERAL SAVINGS AND LOAN ASSOCIATION'S Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, was duly served by mail, postage prepaid, addressed to the following:

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United States of America

DATED: Honolulu, Hawaii, May 22, 1992.

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